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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 166

TAMPA TIMES COMPANY AND THE TRIBUNE COMPANY,

Appellants,

vs.

CITY OF TAMPA, A MUNICIPAL CORPORATION

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

JURISDICTIONAL STATEMENT—Filed May 16, 1947

In the judgment appealed from, the Supreme Court of Florida, the highest Appellate Court of that State, held that certain ordinances of the City of Tampa were valid and enforcible as against the plaintiffs' contention that such ordinances violate the guaranties of the First, Fourth and Fourteenth Amendments to the Constitution of the United States.

Ordinance No. 721-A of the City of Tampa, Florida, imposes a license or occupational tax upon retail and whole-

sale merchants and many other selected types and places of business located within its boundaries. After its enactment, the ordinance was amended by Section 2 of Ordinance No. 897-A, and as amended, Paragraphs (B) and (C) of Sub-Section 62 of Section 1 read as follows:

> "(B) Merchants—Retail: The license tax on every retail merchant, whether any other license tax is required by any sub-section of this ordinance or not, shall be measured by the amount of gross sales made by such merchant and shall be figured and arrived at as follows: Returns shall be made to the City Tax Collector showing the amount of gross sales for the 12 months period ending September 30th, immediately preceding the license year, or as otherwise provided for herein, and on the first $3,000.00 or less the license tax shall be . . . $10.00. On each $1,000.00 of gross sales or major fraction thereof above $3,000.00 . . . $1.00.
>
> (C) Merchants—Wholesale: The license tax on every wholesale merchant, whether any other license tax is required by any subsection of this ordinance or not, shall be measured by the amount of gross sales made by such merchant and shall be figured and arrived at as follows: Returns shall be made by each wholesale merchant to the City Tax Collector showing the amount of gross sales for the 12 months period ending September 30th, immediately preceding the license year, or as otherwise provided for herein, and on each $1000.00 of gross sales so made the license tax shall be . . . $.30. The minimum amount of tax shall be . . . $10.00."

Section 3 of Ordinance No. 721-A reads, in part, as follows:

> "and the Tax Collector is authorized to propound interrogatories and to furnish forms for the filing of the returns and to require the giving of any information necessary to enable him or his authorized deputy to determine the proper amount of license due, and the Tax Collector or his authorized deputy is authorized to

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make such investigation and inspection of the place of business and records of the person required to pay a license as he may determine necessary in order to verify any returns or determine the proper license amount • • •"

On September 18, 1945, the Board of Representatives of the City adopted Ordinance No. 963-A, the pertinent portion of which reads as follows:

"Section 1. That an annual license tax, be and the same is hereby levied upon and shall be collected from every person, firm or corporation, exercising the privileges for carrying on or engaging in the businesses or occupations hereinafter specifically enumerated and in the amounts as follows:

"(a) Newspapers, magazines, or other periodicals or publications published within the City of Tampa, on gross receipts from all sales and advertising, shall pay the same license tax as now provided for merchants by Paragraphs (B) and (C) of Sub-Section 62 of Section 1 of Ordinance No. 721-A of the City of Tampa, as amended by Section 2 of Ordinance No. 897-A; and subject to all other provisions of said Ordinances No. 721-A relative to gross receipts license taxes on merchants."

On December 4, 1945, the plaintiffs, Tampa Times Company and The Tribune Company exhibited their amended bill of complaint in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, against the City of Tampa. The amended bill avers that the plaintiffs are the publishers, respectfully, of Tampa Daily Times and Tampa Morning Tribune, newspapers having an aggregate average daily circulation in excess of 120,000 copies in the City of Tampa and the surrounding area. The amended bill further avers that it is the purpose of the plaintiffs in publishing their respective newspapers to provide the general public with information and intelli-

gence concerning events occurring in the City of Tampa, the State of Florida and the world as a whole, and particularly, to keep the public informed concerning the policies and practices of governmental bodies and agencies, national, state and local. It is further averred that as free members of the press, plaintiffs exercise a salutary influence for better government through the publication of their respective newspapers and do much to maintain the integrity and sustain the energy of officials and agencies charged with the execution of the functions of government in the City of Tampa.

The amended bill avers that the foregoing ordinances were not passed as a regulatory measure under the police power but were enacted to raise revenue for general municipal purposes and with the intention on the part of the defendant to use the license tax imposed thereby as an instrument for restricting and curtailing the circulation of the respective newspapers of the plaintiffs. The amended bill further avers that to enforce such intention, the ordinances purport to make a failure to pay the tax a criminal offense punishable by fines, imprisonment, or both, and further purport to make each day's publication of the respective newspapers of the plaintiffs without compliance with such ordinances a separate offense.

The amended bill avers that the gross receipts of the plaintiffs are derived almost entirely from the sales of copies of their respective newspapers to the general public and from the sale of advertising space therein. It is further averred that the amounts accruing to the plaintiffs from the sale of their respective publications are, of course, in absolute proportion to the number of copies circulated and the amounts accruing from the sale of advertising space in such publications are dependent upon, and are a function of, their circulation in that the amount of space

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sold and the price received therefor are determined by the number of copies to be distributed. The amended bill further avers that the ordinances, therefore, attempt to levy a tax upon the plaintiffs which is in direct proportion to, and based upon, the circulation of their respective newspapers and which will increase in absolute ratio to any increase in circulation.

With reference to Section 3 of Ordinance No. 721-A, the amended bill avers that, in the publication of their respective newspapers, the plaintiffs are dependent for sources of information upon persons who are in possession of information not generally known concerning the administration of public affairs by officials and agencies of the City of Tampa. It is averred that much of this information is in derogation of such officials and agencies, and that disclosure by the plaintiffs of the identity of persons submitting such information would result in subjecting such persons to harrassment and annoyance by those against whom criticism is directed. It is further averred that, to avoid these consequences, and to maintain such sources of information, the plaintiffs publish such material anonymously or in such manner as not to disclose to the public the sources thereof. The amended bill further avers that the provisions of Section 3 purport to clothe minor officials of the defendant with the power to search the premises of the plaintiffs and to determine from their records and files the sources of any information published by the plaintiffs in derogation of officials and agencies of the defendant. It is further averred that such provisions would serve to deny sources of information to the plaintiffs and to deprive the public of intelligence to which it is entitled and which it has traditionally enjoyed, and that the defendant enacted such provisions with the intention of suppressing such information and intelligence.

The amended bill of complaint prays that an injunction issue to prevent the defendant from collecting or attempting to collect the license tax and from enforcing the provisions of the ordinances against the plaintiffs.

The City of Tampa filed a motion to dismiss the amended bill of complaint and the motion was granted by the Chancellor upon the general ground that the amended bill failed to state a cause of action. The plaintiffs declined to further amend and the cause of action was dismissed with prejudice. The plaintiffs appealed to the Supreme Court of Florida and the order of the Chancellor was affirmed by that Court.

The opinion of the Supreme Court of Florida was handed down on February 18, 1947, and petition for rehearing was filed by the plaintiffs within the time allowed by the rules of the Supreme Court of Florida on March 4, 1947. After duly considering the petition, the Supreme Court of Florida entered its order on March 24, 1947, denying the petition, and issued its mandate to the lower Court on the same day. Application for appeal was presented to the Honorable Elwyn Thomas, Chief Justice of the Supreme Court of Florida, on May 16, 1947, and order allowing appeal was entered on that date. Copy of the opinion of the Supreme Court of Florida dated February 18, 1947, and copy of the order denying petition for rehearing dated March 24, 1947, are attached hereto.*

This appeal to the Supreme Court of the United States is filed under the provisions of Section 237(a), of the Judicial Code (28 U. S. C. A. Section 344(a); 8 F. C. A., Title 28, Section 344(a)), reading as follows:

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question * * * the

* (Clerk's Note.—Copies of all opinions are printed as an appendix to the Jurisdictional Statement in No. 165 and are not reprinted here.)

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validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

It has been held repeatedly by the Supreme Court of the United States that this section applies to cases in which the highest Court of a State has held in favor of the validity of a municipal ordinance as against the contention that such ordinance violated provisions of the Constitution of the United States. See *Zacht* v. *Kain*, 260 U. S. 174, 67 L. Ed. 194, 43 S. Ct. 24; *King Manufacturing Co.* v. *Augusta*, 277 U. S. 100, 72 L. Ed. 801, 48 S. Ct. 489; *Jamison* v. *Texas*, 318 U. S. 413, 87 L. Ed. 869, 63 S. Ct. 669; *Largent* v. *Texas*, 318 U. S. 418, 87 L. Ed. 873, 63 S. Ct. 667.

No evidence was taken in the cause and only the question of the legal sufficiency of the amended bill of complaint is presented. In affirming the order of the Chancellor, the Supreme Court of Florida held that the ordinances did not violate the First and Fourteenth, or the Fourth, Amendments to the Constitution of the United States under the facts as stated in the amended bill of complaint. The contentions made by the plaintiffs in the Supreme Court of Florida were:

1. That the action of the defendant in levying a tax upon the right and privilege of the plaintiffs to print and publish their respective newspapers is a violation of the provisions of the First Amendment to the Constitution of the United States guaranteeing freedom of the press, as made applicable to the various states and their political sub-divisions by the Fourteenth Amendment;

2. That the tax is, in fact, a tax upon the volume of circulation of the plaintiffs' respective newspapers in that the gross receipts derived from the publication of such news-

papers are in direct proportion to, and are a function of, their circulation, and increase in absolute ratio to any increase in circulation, and that, consequently, the tax abridges the freedom of the press.

3. That the provisions of the ordinances empowering certain officials of the defendant to enter the places of business of the plaintiffs and force access to their records and files for the purpose of ascertaining the sources of information available to the plaintiffs and suppressing such information, constitute a violation of the provisions of the Fourth Amendment to the Constitution of the United States forbidding unreasonable searches and seizures and the provisions of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing freedom of the press.

The Supreme Court of Florida considered these contentions in its opinion and held that the ordinances did not violate any of the provisions of the Constitution of the United States. In support of their first contention, the plaintiffs cited the following cases: *Grosjean* v. *American Press Company*, 297 U. S. 233, 80 L. Ed. 660, 56 S. Ct. 444; *Lovell v. Griffin*, 303 U. S. 444, 82 L. Ed. 949, 58 S. Ct. 666; *Schneider* v. *Irvington*, 308 U. S. 147, 84 L. Ed. 155, 60 S. Ct. 146; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 87 L. Ed. 1292, 63 S. Ct. 870; *Follett* v. *McCormick*, 321 U. S. 573, 88 L. Ed. 939, 64 S. Ct. 717; *Thomas* v. *Collins*, 323 U. S. 516, 89 L. Ed. 430, 65 S. Ct. 315. The Supreme Court of the United States held in deciding those cases that the First Amendment to the Constitution of the United States constitutes a grant of certain privileges to all and that such privileges may be exercised by virtue of such grant free from the power of taxation or license by the Congress or any other legislative authority. The substance of the doctrine advanced by the Court is that the four great freedoms guaranteed by the

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First Amendment, freedom of speech and of the press, freedom of religion and the right of assembly, stand in a preferred position and that the mandate of the amendment that the exercise of these freedoms shall be guaranteed free to all prohibits the restriction thereof by government through taxation, license or other instrument of oppression.

To support their second contention, the plaintiffs relied upon the case of *Grosjean* v. *American Press Company,* 297 U. S. 233, 80 L. Ed. 660, 56 S. Ct. 444. In that case, the Supreme Court of the United States held that a statute of the State of Louisiana, having provisions similar to those in the ordinances enacted by the City of Tampa, imposed an unconstitutional restriction upon freedom of the press. The Court said in its opinion that the intention of the State of Louisiana to suppress the newspapers of the publishers involved was a necessary implication from the provisions of the statute. In the case at bar it was alleged in the amended bill of complaint, and admitted by the motion to dismiss, that the defendant intended to use the ordinances and the tax imposed thereby as an instrument for the suppression of the plaintiffs' newspapers. This admission in the case at bar makes the action of the City of Tampa a much clearer and more certain violation of the Constitutional amendments than was presented in the *Grosjean* case.

In support of their third contention, the plaintiffs cited the following cases: ***Boyd*** v. ***United States,*** 116 U. S. 616, 29 L. Ed. 746, 6 S. Ct. 524; ***Byars*** v. ***United States,*** 273 U. S. 28, 71 L. Ed. 520, 47 S. Ct. 248; ***Federal Trade Commission*** v. ***American Tobacco Company,*** 264 U. S. 298, 68 L. Ed. 696, 44 S. Ct. 336; ***Jones*** v. ***Securities and Exchange Commission,*** 298 U. S. 1, 80 L. Ed. 1015, 56 S. Ct. 654; ***Martin*** v. ***Chandis Securities Company,*** 128 F. (2d) 731. The doctrine advanced in those cases is that the Fourth Amendment to

the Constitution of the United States prohibits any attempt to vest government officials with sweeping powers of inquisition into the business and affairs of citizens. The cases hold that where visitorial powers are vested in government officials they must be circumscribed by some showing of reasonable necessity for conducting the investigation, a statement of the specific matters to be investigated and a limitation of the investigation to its legitimate purposes and its proper subject matter. Provisions purporting to grant the right to conduct sweeping fishing expeditions into private papers limited only in their scope by the discretion of the officer conducting them are specifically outlawed by the decisions.

All of the issues presented by this appeal raise substantial questions of conflict between the provisions of the ordinances and the Constitution of the United States. These questions having been resolved in favor of the validity of the ordinances in the Supreme Court of Florida, the ultimate decision lies within the appellate jurisdiction of the Supreme Court of the United States.

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